

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING HELD ON
MARCH 14, 2006

LOCATION: MACOMB TOWNSHIP MEETING CHAMBERS
54111 BROUGHTON ROAD, MACOMB, MI 48042

PRESENT: CHAIRMAN, BRIAN FLORENCE
MEMBERS: EDWARD GALLAGHER
VICTORIA SELVA
DAWN SLOSSON

ABSENT: TONY POPOVSKI

ALSO PRESENT: COLLEEN O'CONNOR, TOWNSHIP ATTORNEY
JEROME R. SCHMEISER, PLANNING CONSULTANT
(Additional attendance record on file with Clerk)

Call Meeting to Order.

Chairman FLORENCE called the meeting to order at 7:07 P.M.

1. Roll Call.

Secretary SLOSSON called the Roll Call. Members POPOVSKI absent.

2. PLEDGE OF ALLEGIANCE.

3. Approval of Agenda Items. *(with any corrections)*
*Note: All fees have been received and all property owners were notified
by mail*

MOTION by GALLAGHER seconded by SLOSSON to approve the agenda as presented.

MOTION carried.

4. Approval of the previous meeting minutes:

MOTION by GALLAGHER seconded by SLOSSON to approve the meeting minutes of January 10, 2006 as presented.

MOTION carried.

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PURPOSE OF HEARING:

To consider the requests for variance(s) of Zoning Ordinance No. 10 for the following:

Agenda Number/Petitioner/ Permanent Parcel No. No.	Zoning Ordinance Section
(5) BP Gas Station Permanent Parcel No. 08-31-300-031	Section 10.2402(C)(6)
(6) Marcast Development Permanent Parcel No. 08-15-445-011 08-15-446-001	Section 10.0704(D)(1) 10.0704(D)(2)
(7) Peter DiNoto Permanent Parcel No. 08-17-426-002	Section 10.0504(A)
(8) DDMR Properties, Inc. Permanent Parcel No. 08-06-200-008	Section 10.0402
(9) DDMR Properties, Inc. Permanent Parcel No. 08-06-200-009	Section 10.0402
(10) Elro Corporation Permanent Parcel No. 08-13-200-023	Section 10.0704(A)(4)
(11) Thomas P. Alexander Permanent Parcel No. 08-30-151-016	Section 10.0311(C)((20(c)
(12) Quadrate Development Permanent Parcel No. 08-18-300-010	Section 10.0313 10.0323(A)(10)(I) 10.0323(B)
(13) Masters of Macomb Development Permanent Parcel No. 08-06-200-046	Section 10.0704(B)(2) 10.0704(B)(3)
(14) Metro PCS Michigan Permanent Parcel 08-31-331-002	

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5. VARIANCE REQUEST FROM ZONING ORDINANCE;
Section 10.2402(c)(6) Requesting the extension of an approved site plan.(2nd request for extension)
Located on Northeast corner of Hall and Hayes Roads; Section 31; Hall & Hayes Properties, Petitioner. Permanent Parcel No. 08-31-300-031.
(Tabled from January 10, 2006)

Chairman FLORENCE read the findings and recommendations of March 9, 2006. They are as follows:

At its meeting of January 10, 2006, the Board considered the matter and at the request of the petitioner, postponed action until March 14, 2006.

At its meeting of November 8, 2005, the Zoning Board of Appeals tabled this matter at the request of the petitioner.

In July, 2005, the petitioner requested that the Macomb Township Planning Commission grant an extension of a site plan approval for a car wash on the above described property from July 15, 2005 to July 15, 2006.

On August 16, 2005 the Planning Commission denied the extension. The petitioner is requesting that the Board of Appeals override the action of the Planning Commission to deny the extension of the site plan approval.

At its meeting of December 6, 2005, the Planning Commission discussed the matter and indicated that their denial was based upon the petitioner's illegal use of the property for outdoor sale of merchandise without approval from the Planning Commission in accordance with the Special Land Use provisions of the Zoning Ordinance. The illegal use was concluded only 4 days prior to the petitioner's request for consideration for the extension. The Commission felt that an extension could be construed as an approval for the illegal uses and therefore denied the request.

RECOMMENDATION:

It is recommended that the variance request to override the Planning Commission be denied for the following reasons:

1. Compliance with the strict letter of the requirement that a building permit must be issued within a one-year approval did not unreasonably prevent the ownership from using the property as originally approved. Other commercial developments planned in Macomb Township are given a one-year approval period to commence construction which is evidence that a one-year period is not unnecessarily burdensome. The original plan was approved July 15, 2003.

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It is noted that the petitioner was given a one-year extension from July 15, 2004 to July 15, 2005.

2. The granting of an extension would give to the applicant an advantage or benefit not received by any other commercial developments in Macomb Township. The other owners are, or will be, required to comply with the one-year approval period. As a result, the other property owners do not have the opportunity to make use of additional time.

There is nothing unusual about the parcel in question that sets it apart from other parcels in the area or in Macomb Township. There was nothing to prevent the construction during the approval period. For example, there are no significant grade differences or natural features, such as a stream or wetland, to prevent full use of the parcel according to the ordinance as written.

A letter submitted by the petitioner, dated February 20, 2006, in support of the request, was included into the record.

Paul Valentino, representative, was in attendance and stated the Planning Commission did not deny the Extension of Time based on the reasons as indicated on the findings, which are included in my letter of response. There are now three different reasons given by the Planning Commission. The first was because we had a site plan submitted for a Starbucks to be located at the site, which had been withdrawn, and was the reason for the delay. They were going to move forward with the installation of the car wash, which was the reason for the extension. Secondly, when that was dispelled we were then told the Planning Commission was concerned with a transformer. When I indicated that was not an issue raised at the Planning Commission that is when the Zoning Board of Appeals tabled this matter. Now, the third reason has come out with a document that has been generated some time after the matter was tabled, indicating that there was some illegal activity of outdoor sales on the premise. With that notification, I filed a Freedom of Information Act Request and, with the response back, found that there have been no ordinance violation or tickets issued. This, in fact, was a third fabricated reason. I am now back to what I originally stated that denying the extension action is arbitrary and capricious.

The Planning Commission is going to require us to take the exact same site plan and revise it to it meets and complies fully with the ordinances and will be approved. This, in turn, will delay us months and cost us several thousand dollars reapplying for the exact same site plan approval. The purpose of the ability to ask for an extension is to meet such hardship as we have here. We legitimately looked at placing a Starbucks at this location. We submitted the new site plans to accommodate that, so we held off on constructing the car wash while we submitted those plans. We fully plan on complying with the approved site plan.

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Colleen O'Connor, Township Attorney, stated that because the owner did not receive violation tickets does not mean that there have been no illegal issues occurring at the site.

Paul Valentino asked how his client was to know unless tickets were issued. My client can't be kept in the dark.

Colleen O'Connor, Township Attorney, stated that if you own property in the Township you are to know what the ordinances are. So you are on notice by the very fact that the ordinance is available for public use and review. There are certain things that aren't allowed to be sold on the property, outdoor storage violations, and just because you don't receive a violation ticket, doesn't mean that you're not violating those ordinances.

Paul Valentino stated that they were not violating anything. This is the first time that we have heard of any such issues. The site plan has nothing to do with the illegal activity that takes place.

Member SELVA stated this is the second request for the site plan and wondered why it has taken approximately 2 ½ years to complete the site.

Paul Valentino stated that during the one year extension, the Starbuck addition came to light but were unable to negotiate a final agreement. That request was cancelled and immediately asked for an extension which is being recommended for denial. My clients are trying to maximize their site along with making it functional.

Member SELVA asked what type of extension are you seeking now.

Paul Valentino stated under the Zoning Ordinance it is one year, but that they would comply with what was given as long as it is reasonable.

Public Portion: None.

**MOTION by SLOSSON seconded by SELVA to close the public hearing.
MOTION carried.**

MOTION by GALLAGHER seconded by SELVA to deny the variance request of Section 10.2402(C)(6)-Requesting the extension of an approved site plan; Located on the northeast corner of Hall Road and Hayes Road; Section 31; BP Gas Station, Petitioner. Permanent Parcel No. 08-31-300-031. The variance is being denied since there was ample information given at the Planning Commission meeting. There are three different sets of site plans that you want us to act upon and no one knows the exact plan you want us to vote upon.

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Member GALLAGHER voted to deny since the Planning Commission acted properly. There are other remedies that could be pursued to complete the site plan.

Member SELVA voted to deny since the Planning Commission presented their reasons and those reasons are not arbitrary.

Member SLOSSON voted to deny based upon the information received from the Planning Commission.

Chairman FLORENCE voted to deny since the Board does not typically consider a reason such as a monetary issue as a reason to approve a variance.

MOTION carried.

6. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.0704D1 To reduce the landscape wall setback from 55' to 3'
Section 10.0704D2 to reduce the sideyard setback from 7.5' to 0'.
Located on Northwest and Southwest corners of Castellana Drive and Card Road; Section 15; Marcast Development, Petitioner. Permanent Parcel Nos. 08-15-445-011 and 08-15-446-001. (Tabled from January 10, 2006)

The petitioner submitted a letter of request, dated March 7, 2006, asking that the item be tabled as follows:

"Please table the above stated item from your March 14, 2006 Z.B.A. meeting. This item requires Planning Commission and Township Board recommendation before the Zoning Board of Appeals can consider it. This should be tabled until it goes through that process. This was recommended at the ZBA meeting by the Township Attorney, Larry Dloski. Thank you for your consideration".

MOTION by SLOSSON seconded by SELVA to table the variance request at the petitioner's request.

MOTION carried.

7. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section: 10.0504 A: Request to allow a parcel less than required by the zoning ordinance and to increase the depth to width ratio.
Section: 10.0504A: Request to allow a width of 98.6' rather than 100'.
Located on East side of Romeo Plank Road, approx. 3/4 mile north of 23 Mile Road; Section 17; Peter DiNoto, Petitioner. Permanent Parcel No. 08-17-426-002. (Tabled from January 10, 2006)

Chairman FLORENCE read the findings and recommendations of March 9, 2006 as follows:

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At its meeting of January 10, 2006, the Zoning Board of Appeals considered this matter, and based upon the petitioner's request, postponed action until March 14, 2006.

The petitioner is requesting permission to split a parcel fronting on Romeo Plank Road from the parent parcel which extends to the east approximately 1/4 mile. The proposed split will create a non-conforming parcel. The petitioner is also requesting a variance to allow the remainder portion of a split parcel to be 98.6' wide rather than 100' as required by the Zoning Ordinance.

The surveys, as submitted, in connection with the application for the above described variances, differ from the surveys as acted upon by the Township Assessor. Also, the drawings and surveys reviewed by the undersigned, fixes the east property line for subject parcel west of the Middle Branch of the Clinton River. The east line should be set along the centerline of the river rather than an arbitrary line west of the river. The centerline is used as the dividing line for other parcels south along Romeo Plank in the vicinity of 23 Mile Road. (To date, no revised plans have been submitted.)

RECOMMENDATION:

It is recommended that the variances relative to the width and depth to width ratio, be approved based upon the drawings reviewed by the Assessors Office. However, such a recommendation is conditioned upon final approval until such time as that portion of the property that will be created without road frontage, is combined with parcels that will have road frontage in accordance with the requirements of the zoning ordinance.

Given that the surveys and drawings can be submitted that will be consistent with the drawings submitted to the Assessor's Office, it is recommended that the requests be granted for the following reasons (as conditioned above):

1. The use of the property for residential purposes will remain consistent with the Township Master Plan and Zoning Ordinance.
2. The land division does not change the 98.6' of frontage, before or after the split.
3. The structures on the property meet the setback requirements of the Zoning Ordinance.
4. The frontage dimension of the parent parcel was fixed and not created by the petitioner.

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Chairman FLORENCE stated a letter dated March 7, 2006 had been included from the Assessor's Office for the Land Division/Combination request.

Jerome R. Schmeiser, Planning Consultant, stated the statement in the findings indicating that the drawings submitted to the Assessor and your body differ, have since been corrected. But, the issue of the combination for the property at the rear, across the river, still needs to be addressed.

Ed Bouchae, representative, was in attendance and stated they feel the Planning Consultants recommendation is reasonable and they are willing to accept and comply with the conditions suggested. The merits of this request are sterling, this particular parcel is already out of compliance with the underlying zone in that it is too narrow. The split will not affect the width since it is fixed at 98.6 feet. However, the new width to depth ratio will be much more in compliance with the underlying zone, bringing it just over the depth to width ratio. It is mathematically impossible to comply with the 3:1 ratio when the parcel is narrower than 100 feet. These hardships were created long before the Zoning Ordinance was enacted. Pursuant to the Zoning Ordinance, these nonconformancies must be allowed to be continued. We're not changing any of the structures on the lot as indicated in the findings. There is no reason to deny this request, since it will bring the parcel more in line with what the Township is seeking.

Jerome R. Schmeiser, Planning Consultant, asked what length of time would be needed to assemble the parcels. If the parcels aren't combined, the split does not occur, nor does the variance become effective.

Member SELVA stated that if no split were to occur then there would be no variance.

Ed Bouchae stated that they are aggressively pursuing the completion of all of these transactions. There is a parcel to the immediate south, which is involved in litigation from a denial given by the Assessor, for a split/combination request. Chairman FLORENCE asked if one year would be sufficient.

Ed Bouchae stated it was too hard to commit.

Public Portion: None.

MOTION by SLOSSON seconded by SELVA to close the public portion.

MOTION carried.

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MOTION by SELVA seconded by SLOSSON to grant the variance of Section 10.0504(A)-Request to allow a parcel less than required by the Zoning Ordinance and to increase the depth to width ratio. The variance is granted based upon the contingencies that all parcels are combined, otherwise the variance does not become effective, and upon the Planning Consultants recommendations as follows:

- 1. The use of the property for residential purposes will remain consistent with the Township Master Plan and Zoning Ordinance.**
- 2. The land division does not change the 98.6' of frontage, before or after the split.**
- 3. The structures on the property meet the setback requirements of the Zoning Ordinance.**
- 4. The frontage dimension of the parent parcel was fixed and not created by the petitioner.**

Discussion was held regarding the length of time for the parcels to be combined.

Member SELVA withdrew her motion.

The following resolution was offered by SELVA and seconded by SLOSSON:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied, and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved, that the action of the Board is to grant the requested variance of Section 10.0504(A)-Request to allow a parcel less than required by the Zoning Ordinance and to increase the depth to width ratio; Located on the east side of Romeo Plank Road, approximately $\frac{3}{4}$ mile north of 23 Mile Road; Section 17; Peter DiNoto, Petitioner. Permanent Parcel No. 08-17-426-002. The variance was granted with the Planning Consultants recommendations, as follows, and that the Zoning Board of Appeals revisit the variance request in two years, to determine the finalization of the parcel combination or to get an extension.

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1. The use of the property for residential purposes will remain consistent with the Township Master Plan and Zoning Ordinance.
2. The land division does not change the 98.6' of frontage, before or after the split.
3. The structures on the property meet the setback requirements of the Zoning Ordinance.
4. The frontage dimension of the parent parcel was fixed and not created by the petitioner.

MOTION carried.

The following resolution was offered by SELVA and seconded by SLOSSON:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied, and that conditions exist that are unique to the property, and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved, that the action of the Board is to grant the requested variance of Section 10.0504(A)-Request to allow a width of 98.6 feet rather than 100 feet; Located on the east side of Romeo Plank Road, approximately $\frac{3}{4}$ mile north of 23 Mile Road; Section 17; Peter DiNoto, Petitioner. Permanent Parcel No. 08-17-426-002. The variance was granted with the Planning Consultants recommendations as follows and that the Zoning Board of Appeals revisit the variance request in two years, to determine the finalization of the parcel combination or to get an extension.

1. The use of the property for residential purposes will remain consistent with the Township Master Plan and Zoning Ordinance.
2. The land division does not change the 98.6' of frontage, before or after the split.
3. The structures on the property meet the setback requirements of the Zoning Ordinance.
4. The frontage dimension of the parent parcel was fixed and not created by the petitioner.

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MOTION carried.

8. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.0402 to permit a condominium project of 62 units
Located on West side of Romeo Plank, 1,237.10' South of 26 Mile Road;
Section 6; DDMR Properties, Inc., Petitioner. Permanent Parcel No. 08-06-
200-008.

Chairman FLORENCE read the findings and recommendations of March 9, 2006.
They are as follows:

The petitioner is requesting allowance to develop a condominium project of 62 units to be developed in a total of 17 buildings. Two of the buildings will be 2 units each—2 of the buildings will be 3 units each, and 13 of the buildings will be 4 units each.

The petitioner is planning to combine -200-008 and -200-009 to develop a condominium project. That matter is currently in litigation. The total acreage for the 2 parcels combined in the legal process is 12.17 acres with a density count of 5.09 units per acre at a project size of 62 units.

The property is zoned AG and planned for single family at a density of 3 units per acre. The total number of units allowed in accordance with the master plan would be 36.51 based upon the 12.17 acres.

RECOMMENDATION:

It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the density requirement would not unreasonably prevent the ownership from using the property as zoned. Other residential structures planned in Macomb Township will be required to comply with the same density requirements which are evidence that the proper density would not be unnecessarily burdensome.
2. The granting of a variance, as requested, would give to the applicant an advantage or benefit not received by any other property owners in residential developments in Macomb Township. The other owners are, or will be, required to comply with the density requirement. As a result, the other property owners do not have the opportunity to create 26 additional residential units on the property in question.

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There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the density requirements from being maintained. For example, there are no significant grade differences, or natural features, such as a stream or wetland, to prevent full use of the parcel, according to the ordinance, as written.

3. The variance would amount to increasing the density by approximately 58%.

Jack Dolan, representative, was in attendance and stated that both items 8 and 9 were tied together and requested that all comments made in item 8 be carried over for item 9. (Handouts were provided to the members to aid in the explanation of the variance request being made) He noted that when his client purchased the property, he relied on the Master Plan that showed the property not abutting commercial property. Since the purchase of the property in question, the property to the north has changed from the designation on the Master Plan, which now makes the zoning inconsistent with that of the subject property.

Mr. Dolan highlighted the necessity of having a transitional buffer zone.

In summary, there is a unique circumstance that was created by the Township itself, when it rezoned the property. This is not repeated anywhere else in the Township, where the Master Plan has been substantially exceeded and a rezoning brought to a parcel which was bought with the expectation that the Master Plan would be conformed to and complied with and that there would be a sufficient 400 foot of agricultural property to the north. Even though the Township did rezone the property to R-1, it is our belief that the legal procedures were not followed and the property was not legally rezoned.

Now, Mr. Dolan presented four witnesses being Frank Mancini, Brian Wilson, Bill Moesher and Ken Blondel who all testified to the justification for granting the requested variance. (Several handouts were presented as exhibits during the meeting.)

Public Portion: None.

MOTION by SLOSSON seconded by SELVA to close the public portion.

MOTION carried.

MOTION by GALLAGHER seconded by SLOSSON to deny the variance request of Section 10.0402-Request to permit a condominium project of 62 units; Located on the west side of Romeo Plank Road; 1,237.10 feet south of

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26 Mile Road; DDMR Properties, Petitioner. Permanent Parcel No. 08-06-200-008. The variance was denied since there is current litigation pending on the proposed request and the Zoning Board of Appeals does not want to intervene in any court decision that may be made.

Member GALLAGHER voted to deny since the issue is in the court system. That decision should be finalized prior to our decision. There was reason for the rezoning recommendation of the property, that occurred at the Planning Commission meeting. 26 Mile Road is going to be a major road consisting of three lanes each way.

Member SELVA voted to deny since there needs to be consistency within the Township. For clarity and for future references, this is really a zoning issue and it needs to be handled in court.

Member SLOSSON denied based on the information that we currently have. The property is zoned R-1, and the plans that have been submitted, and the variances requested, are based upon an R-2-L zoning. Since this is in litigation, it's hard to make a decision on an issue we don't have a judgment on.

Chairman FLORENCE denied as well, since at least 2/3 of the argument is based upon economical factors which do not equate to a practical difficulty.

MOTION carried.

9. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.0402 to permit a condominium project of 62 units
Located on West side of Romeo Plank, 1,237.10' South of 26 Mile Road;
Section 6; DDMR Properties, Inc., Petitioner. Permanent Parcel No. 08-06-200-009.

Chairman FLORENCE read the findings and recommendations of March 9, 2006. They are as follows:

The petitioner is requesting allowance to develop a condominium project of 62 units to be developed in a total of 17 buildings. Two of the buildings will be 2 units each—2 of the buildings will be 3 units each, and 13 of the buildings will be 4 units each.

The petitioner is planning to combine -200-008 and -200-009 to develop a condominium project. That matter is currently in litigation. The total acreage for the 2 parcels combined in the legal process is 12.17 acres with a density count of 5.09 units per acre at a project size of 62 units.

The property is zoned AG and planned for single family at a density of 3 units per acre. The total number of units allowed in accordance with the master plan would be 36.51 based upon the 12.17 acres.

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RECOMMENDATION:

It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the density requirement would not unreasonably prevent the ownership from using the property as zoned. Other residential structures planned in Macomb Township will be required to comply with the same density requirements, which are evidence that the proper density would not be unnecessarily burdensome.
3. The granting of a variance, as requested, would give to the applicant an advantage or benefit not received by any other property owners in residential developments in Macomb Township. The other owners are, or will, be required to comply with the density requirement. As a result, the other property owners do not have the opportunity to create 26 additional residential units on the property in question.

There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the density requirements from being maintained. For example, there are no significant grade differences or natural features such as a stream or wetland, to prevent full use of the parcel according to the ordinance as written.

The variance would amount to increasing the density by approximately 58%.

Jack Dolan again asked that the same statements and comments be carried over from item 8.

MOTION by GALLAGHER seconded by SLOSSON to deny the variance request of Section 10.0402-Request to permit a condominium project of 62 units; Located on the west side of Romeo Plank Road; 1,237.10 feet south of 26 Mile Road; DDMR Properties, Petitioner. Permanent Parcel No. 08-06-200-008. The variance was denied since there is currently litigation on the proposed request and the Zoning Board of Appeals does not want to override a court decision that will be made.

Member GALLAGHER voted to deny since the issue is in the court system. That decision should be finalized prior to our decision. There was reason for the rezoning recommendation of the property, that occurred at the Planning Commission meeting. 26 Mile Road is going to be a major road consisting of three lanes each way.

Member SELVA voted to deny since there needs to be consistency within the Township. For clarity and for future references, this is really a zoning issue

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and it needs to be handled in court.

Member SLOSSON denied based on the information that we currently have. The property is zoned R-1, and the plans that have been submitted, and the variances requested, are based upon an R-2-L zoning. Since this is in litigation, its hard to make a decision on an issue we don't have a judgment on.

Chairman FLORENCE denied as well, since at least 2/3 of the argument is based upon economical factors which do not equate to a practical difficulty.

MOTION carried.

10. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.0704A4 Request to create a parcel without 300' of continuous road frontage.
Located on South side of 24 Mile Road, 1/2 mile East of North Avenue;
Section 13; Elro Corporation, Petitioner. Permanent Parcel No. 08-13-200-023.

The petitioner submitted a letter dated March 1, 2006 to be tabled as follows:

"Elro Corporation respectfully requests the tabling of this item that is scheduled to be placed on the Zoning Board of Appeals Agenda of March 14, 2006, to the date certain Zoning Board of Appeals Agenda of Tuesday, May, 9, 2006.

Pursuant to my telephone conversation on this date with the Planning Supervisor, I understand that there will be no additional changes or fees with the tabling to the date certain."

MOTION by SLOSSON seconded by GALLAGHER to table the variance request of Section 10.0704(A)(4)-Request to create a parcel without 300' of continuous road frontage; Located on the south side of 24 Mile Road, 1/2 mile east of North Avenue; Section 13; Elro Corporation, Petitioner. Permanent Parcel No. 08-13-200-023.

MOTION carried.

11. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary section: 10.0311C2c. Front yards. Permission to vary the front yard setback.
Located on East side of Hayes Road, 1/2 Mile South of 21 Mile Road;
Section 30; Thomas P. Alexander, Petitioner. Permanent Parcel No. 08-30-151-016.

Chairman FLORENCE read the findings and recommendations of March 9, 2006. They are as follows:

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The petitioner is requesting permission to construct an addition to an existing house in the front yard setback area. The proposed addition would project 9 feet into the front yard. All the homes in the neighborhood including the house adjacent to the petitioner's residence have provided the 25' setback in accordance with the requirements of the zoning ordinance.

RECOMMENDATION:

It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the setback requirement would not unreasonably prevent the ownership from using the property as zoned. Other residential structures planned in Macomb Township will be required to comply with the same setback requirements which are evidence that the proper building setback would not be unnecessarily burdensome.

4. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in residential developments in Macomb Township. The other owners are or will be required to comply with the setback requirement. As a result the other property owners do not have the opportunity to make use of an additional 9' of property.

There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the front yard setback from being maintained 25' from the property line. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

The variance would amount to reducing the setback by approximately 34% from the front property line.

The following letter of explanation was submitted by the petitioner dated February 10, 2006 as follows:

- "1. The strict enforcement of this provision would prevent Mr. Alexander from providing the necessary care required by his son's special needs. Mr. Alexander's son, Tim, requires care from an in-home nurse. The Alexander home is a quad level and as Mr. Alexander's son grows, it is becoming more and more difficult to move him from level to level. Our hope is to add to the front of the home, allowing the installation of an elevator, which would allow Tim to enter the home from the front door and then be lowered to the lower level where we intend to create a barrier-free bathroom, bedroom and therapy room. The rooms will all be equipped with an overhead track system to assist the nurse, or family, in moving

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Tim. These modifications would allow Tim to live at home and improve his quality of life.

2. The conditions that are unique to this property are:
 - a. The parcel is a corner lot which has two front yard setbacks that prevent us from building to the side of the home to accommodate the elevator.
 - b. The home is a quad level. Tim must be able to access different levels of the home and the use of the stairs has become very difficult. Moving Tim requires two or more adults to lift him and his wheel chair up and down the steps. Adding this elevator would ensure the current and future safety of Tim and his caregivers from any accident that may occur from lifting from level to level.
3. Mr. Alexander is not the original owner of this home. It was built in 1976 with no consideration for someone confined to a wheel chair.
4. We believe this request will not confer special privileges. It is our goal to not simply add space to the home, but to provide Mr. Alexander's son with the same mobility within his home to enhance his quality of life to that of his family and neighbors."

Chairman FLORENCE also read a letter of support from Douglas and Brandi Garden, 48260 Walden, as follows:

"We received a notice of public hearing for March 14, 2006 regarding the zoning ordinance for permission to vary the front yard setback of Mr. Alexander's property.

Please accept this statement when making your final decision regarding this matter. As neighbor's directly across the street, we gladly give our consent and he has our understanding in his need to remodel and improve his house so he is better able to accommodate his son Tim.

Tim has special needs that this existing house cannot meet, without this remodel. Mr. Alexander and his family's house will be a home that will not only make life easier for them but also benefit Tim in ways he so very much needs.

We hope and pray permission is granted."

John Gelfusa, representative, was in attendance and presented additional letters from the neighbors in support of Mr. Alexander's request.

Chairman FLORENCE read the neighbors' names and address in support of the request as follows:

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Brian and Kelley VanDamme, 48220 Walden Road
Richard and Donna Ballard, 48280 Walden Road
Norman and Tamra Dixon, 15407 Brandi Lane

John Gelfusa explained the rationale behind the request being made on the front of the house which is a quad level. Mr. Alexander's son is confined to a wheelchair, and is not a position where he can wheel himself around. His son requires constant care. Further, when looking at the options for the addition they could not go out to the side since they are a corner lot which gives them double front yard setbacks. The rear would force them to go around the garage which has an existing deck which would create a distance that would be quite cumbersome. Also, they wanted to create a feeling that the whole family was entering into the same entry which would be the new front door. The addition would consist of an elevator that would take Tim in from the main level of the home to the lower level which would be devoted to Tim and his daily needs. This addition is needed in order for Tim to live and function in the home as everyone currently does. The request is being made for Tim to feel as part of the family.

Mr. Alexander, petitioner, gave a brief overview of his 10 year old son Tim and what his daily needs are. He noted that he currently carries his son around in the house and is getting to be too much for him to handle. In addition, he has a nurse that comes in the morning and afternoon to help with his cares. He noted that he has been a neighbor in the area for approximately 15 years and is looking at making it easier for taking care of his son in the future, as he gets older as well.

Public Portion:

Sam Cravens, 15420 Brandy Lane, stated that he and his wife have no objections to the modifications being made to the house and that he did not want to lose the Alexanders' as a neighbor.

John Gelfusa stated the design of the new addition would be tying into the existing gable and would be placing a ramp in the front versus the side where is currently is located. The façade would remain the same other than placing a roof over the front porch.

MOTION by SELVA seconded by SLOSSON to close the public portion.

MOTION carried.

The following resolution was offered by SELVA and seconded by SLOSSON:

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Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved that the action of the Board is to grant the requested variance of Section 10.0311(C)(2)(c)-Front yards-Request permission to vary the front yard setback; Located on the east side of Hayes Road, ½ mile south of 21 Mile Road; Section 30; Thomas P. Alexander, Petitioner. Permanent Parcel No. 08-30-151-016. The variance was granted since this family can not use this home in the fashion as needed. In addition, that the neighbor's letters be attached to the Notice of Variance that will get recorded at the Register of Deeds Office.

Jerome R. Schmeiser, Planning Consultant, stated if the variance is granted that it would need to be conditioned. There could possibly be assessment reductions sought in the future should the existing neighbors, who are in favor, leave. The Township should be very careful, since they are setting a precedence and creating a deterioration in the neighborhood.

Discussion was held on similar cases that were denied by the Zoning Board of Appeals and approved by the court system.

MOTION carried.

12. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.0313. To reduce the clear vision zone from 20' to 0'.
Section 10.0323A10(I). Request to install bollards rather than a 5' sidewalk along a building fronting a driveway.
Section 10.0323B. Request to remove loading areas from the site plan.
Located on the North side of 23 Mile Road, west of Milano Drive; Section 18; Quadrate Development, Petitioner. Permanent Parcel No. 08-18-300-010.

Chairman FLORENCE read the findings and recommendations of March 9, 2006. They are as follows:

The petitioner is requesting variance to allow the standard development of a mini storage/self storage project. The petitioner contends that the normal development of a mini storage project provides a series of buildings containing individual units for personal storage. Such units are traditionally constructed without sidewalks in front because of the size of the storage area. Further, the driveways are planned as one

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way drives with 35' of width which provides for the necessary clear vision. Also contended by the petitioner is the fact that the project in itself, is a loading/unloading area and does not need the normal loading areas.

RECOMMENDATION:

It is recommended that the variance requests be granted since the petitioner has taken the steps of bollard installation and wider driveways to provide the necessary safety concerns of the zoning ordinance.

This action is taken with the understanding that a site plan will be received from the Planning Commission and that no outside storage will be permitted unless approved by the Planning Commission as regulated in Sec. 10.2107J-7 of the Zoning Ordinance.

The following letter of explanation was submitted by the petitioner dated February 14, 2006 as follows:

“Section 10.0313 Clear Vision Zone:

1. The strict enforcement of this ordinance will likely make this type of project (Self Storage) unfeasible in Macomb Township. Reason being is that self storage facilities are almost always laid out in the similar fashion we have designed. By providing a 20' clear vision at each intersection one would have to eliminate 90° corners on every building on the site.
2. The circumstances that make this development unique from any other within the Township, is that this is, in fact, a self storage facility, where all the internal driving lanes are gated and inaccessible to the general public. In fact, the only other self storage facility within the Township limits is laid out very similar to this development.
3. The conditions that are limiting us were created by a revision to the Township Ordinance. This revision did not take into account several factors that would affect a self storage development, along with many other types of development, as well.
4. The requested variance would confer no special privileges to us that would be denied to other properties because there are no other self storage facilities within the Township that have been build to these standards. The only other facility in the Township has been build to standards very similar to the ones laid out in our plan.”

Michael D'Agostini, petitioner, was in attendance and indicated he was willing to discuss the matter further should the board desire.

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Public Portion: None.

MOTION by GALLAGHER seconded by SLOSSON to close the public portion.

MOTION carried.

The following resolution was offered by GALLAGHER and seconded by SLOSSON:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved that the action of the Board is to grant the requested variance of Section 10.0313-Request to reduce the clear vision zone from 20 feet to 0 feet; Located on the north side of 23 Mile Road, west of Milano Drive; Section 18; Quadrate Development, Petitioner. Permanent Parcel No. 08-18-300-010. The variance was granted since the petitioner has taken the steps of bollard installation and wider driveways to provide the necessary safety concerns of the Zoning Ordinance. This action is taken with the understanding that a site plan will be received from the Planning Commission and that no outside storage will be permitted unless approved by the Planning Commission as regulated in Section 10.2107J-7 of the Zoning Ordinance.

MOTION carried.

The following resolution was offered by GALLAGHER and seconded by SLOSSON:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

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Now, therefore, be it resolved that the action of the Board is to grant the requested variance of Section 10.0323(A)(10)(I)-Request to install bollards rather than a 5 foot sidewalk along a building fronting a driveway; Located on the north side of 23 Mile Road, west of Milano Drive; Section 18; Quadrate Development, Petitioner. Permanent Parcel No. 08-18-300-010. The variance was granted since the petitioner has taken the steps of bollard installation and wider driveways to provide the necessary safety concerns of the Zoning Ordinance. This action is taken with the understanding that a site plan will be received from the Planning Commission and that no outside storage will be permitted unless approved by the Planning Commission as regulated in Section 10.2107J-7 of the Zoning Ordinance.

MOTION carried.

The following resolution was offered by SLOSSON and seconded by GALLAGHER:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved that the action of the Board is to grant the requested variance of Section 10.0323(B)-Request to remove loading areas from the site plan; Located on the north side of 23 Mile Road, west of Milano Drive; Section 18; Quadrate Development, Petitioner. Permanent Parcel No. 08-18-300-010. The variance was granted since the petitioner has taken the steps of bollard installation and wider driveways to provide the necessary safety concerns of the Zoning Ordinance. This action is taken with the understanding that a site plan will be received from the Planning Commission and that no outside storage will be permitted unless approved by the Planning Commission as regulated in Section 10.2107J-7 of the Zoning Ordinance.

MOTION carried.

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13. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.0704B2. To increase the maximum building height of a structure from 28' to 32'.
Section 10.0704B3. To allow first floor elevation to be measured from the highest top of curb elevation-- not the lowest.
All lots located in the Villagio Subdivision. The Villagio Subdivision is located on the west side of Romeo Plank Road, 1/3 mile South of 26 Mile Road; Section 6; Masters of Macomb Development, Petitioner. Permanent Parcel No. 08-06-200-046.

Chairman FLORENCE read the findings and recommendations of March 9, 2006. They are as follows:

The petitioner is requesting that all of the lots in the developing Villagio Subdivision be granted the above described variances.

The request is based upon the fact that Masters of Macomb Development plan to build larger homes in the subdivision.

No specific request for specific site plans have been submitted.

RECOMMENDATION:

It is recommended that the variance request be denied for the following reasons

1. Compliance with the strict letter of the height requirements would not unreasonably prevent the ownership from using the property as zoned. Other residential structures planned in Macomb Township will be required to comply with the same height requirements which are evidence that the proper height requirements would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in residential developments in Macomb Township. The other owners are, or will be, required to comply with the height requirements. As a result, the other property owners do not have the opportunity to make use of additional height for residential development.

There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the height requirement from being maintained. For example, there are no significant grade differences or natural feature, such as a stream or wetland, to prevent full use of the parcel according to the ordinance as written.

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3. The variance would amount to increase the height by approximately 12% for each lot.

The petitioner submitted in the following letter of explanation dated February 16, 2006 as follows:

"The applicant, Masters of Macomb Development, Inc. ("Applicant ") is the fee simple owner of real property, consisting of approximately 136 acres, commonly know as the "Villagio Subdivision" and identified as Parcel I.D. No. 08-06200-046. The property is located on the south side of 26 Mile Road and west side of Romeo Plank Road. The subdivision is proposed for a total of 264 single family detached residential lots. The lot sizes range from a minimum 87' width to 106' width, with depths ranging from minimum 133' to 178'. The property currently zoned Residential Urban One Family District (R-1), which requires minimum 70' wide lots."

"Section 10.0704(B)(2) provides in part that the maximum height of any structure in this zoning district shall not exceed 28' in height. Applicant seeks a subdivision wide variance, allowing for maximum building height not to exceed 32' in height. The additional height is necessary in order to accommodate the larger homes that Applicant envisioned for this development in providing the larger lot size, and to accommodate the architectural criteria and demands for such homes, in light of the topography and other site conditions not found in other properties with the same zoning district."

"Section 10.0704(B)(2) provides as follows:

"The elevations of the structure's first floor shall be limited to a maximum of 5' above the lowest top of curb elevation on the adjacent roadway along the parcel's frontage. In areas where the adjacent roadway does not have a curb, the lowest road centerline elevation shall be used in lieu of the lowest top of curb elevation."

"Applicant seeks a variance allowing the structure's first floor elevation to be a maximum of 5' above the highest top of curb elevation (and not "lowest") on the adjacent roadway along the parcel's frontage. This variance is also necessary to accommodate the larger homes which are planned for this subdivision and necessary, due to the land topography, contours and street design. Conditions and circumstances, unique to the property, require the above-referenced variances, in order to permit dwelling construction consistent with the upscale nature of the development."

"The Township Zoning Enabling Act authorizes the Zoning Board of appeals ("ZBA") to grant non-use variances as requested here, if there are practical

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difficulties in complying with the strict letter of the ordinance. Under Michigan law, an applicant need not show “unnecessary hardship”, in order to obtain non-use variances but, rather it only requires to demonstrate the lesser standard of practical difficulties”. National Boat Land, Inc. v Farmington Hills Zoning Board of Appeals, 146 Mich. App 380, 387 (1985). The National Boat Land court cites three (3) factors (borrowed from other jurisdiction) to aid a ZBA or court in determining whether strict adherence to zoning regulations pose a practical difficulty. These factors include;”

1. *Whether compliance with the strict letter of the restrictions governing area, setback, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.*
2. *Whether a grant of the variance applied for would do substantial justice to Applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.*
3. *Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare will be secured.”*

“The Applicant is seeking the above-referenced variance for the subdivision, relative to building height and measurement of first floor elevation from the regulations applicable in the R-1 zoning district. Consistent with the three (3) factors stated above, compliance with the strict letter of the R-1 regulation, will unreasonably prevent the Applicant from using its property to construct larger homes which would be in line and consistent with the larger lots provided in the subdivision and upscale nature envisioned for same. Due to the topography and contours of the land, the variances are necessary to allow flexibility for Applicant to be able to sell lots and build residential dwellings, in accordance with the higher end pricier homes contemplated. In fielding requests and inquires from potential customers and in reviewing plans submitted for home construction, architectural criteria and challenges in the subdivision, these variances are necessary to accommodate the home construction. Compliance with the strict letter of the R-1 regulation renders conformity with the restrictions unnecessarily burdensome, as the property has already been developed in accordance with the zoning district and approval final plat. The requested variance will allow for more upscale and pricier homes, which will in turn permit Applicant to complete with neighboring municipalities, such as Shelby and Washington Townships.”

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"It is unnecessary to strictly apply the burdensome zoning regulations, when relaxation of those rules will further the Township's Master Plan goals and simultaneously grant relief to the Applicant. The grant of the variance will also do substantial justice to the Applicant, as they will allow Applicant to market the lots and build upscale homes, as envisioned when developing the property for larger lots under R-1 zoning district. Moreover, granting the variance will also provide substantial justice to surrounding property owners, because the variances, if granted, will have no more impact on surrounding uses in terms of traffic, population and infrastructure, than that for which the Township has already planned and expected. The Township and its residents will benefit as a whole, as these variances will allow Applicant to accommodate construction of the larger homes which are planned for the subdivision. The ZBA, therefore, can grant relief in a fashion that is consistent with the spirit of zoning ordinance and in harmony with the public safety and welfare."

"In granting the request variances, there is no danger or detriment to the public health, safety or welfare, and the spirit of the zoning ordinance would be met. Due to the larger lots sizes, along with topography and contours of the property, which present architectural challenges, compliance with the strict letter of the ordinance renders conformity with the restrictions unnecessarily burdensome. Although it is foreseeable that homes within the subdivision will be built in accordance with the current R-1 height and first floor elevation requirements, the variances are necessary to allow for creative designs and flexibility in marketing the project to potential buyers, who are looking at other similar properties in neighboring communities, and in meeting architectural and other challenges presented by the site topography and conditions."

Frank Mancini, petitioner, was in attendance, and indicated that he was grateful for the recent 28 foot height increase on roofs. Unfortunately, we are still in limbo with the 60 inch elevation due to the topography of the proposed subdivision. He then read areas of concern from the above letter that had been prepared in conjunction with Tom Kalas to highlight the need for the requested variances.

Colleen O'Connor, Township Attorney, stated that there seems to be a misunderstanding about what the standard is for granting a variance. The term hardship is not the correct terminology. The correct term is a practical difficulty. There must be something on the land that prevents the property from being used as zoned. It's not that the land is going to be more profitable, not the builder messed up or that a member of a family can be housed in their house.

Frank Mancini stated that the practical difficulty is that it does not allow us to be more profitable. It does not allow us to get the type of clientele they are seeking in this community.

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Colleen O'Connor, Township Attorney, stated again that a practical difficulty is a natural feature, such as a wetland that prevents you from using the property as zoned. If you have property zoned R-1 and you have lots that can't be used as R-1 then you have a practical difficulty. The fact that you are not able to attract the clientele that you want to attract is not a practical difficulty.

Public Portion: None.

MOTION by SLOSSON seconded by SELVA to close the public portion.

MOTION carried.

Member SELVA stated that you are trying to compete with other communities, but you also need to remember that you are competing with other sales of homes in the community in which you are building. Further, you also now have an advantage over recently built houses which have been built with 25 foot height of structures.

MOTION by GALLAGHER seconded by FLORENCE to deny the variance of Section 10.0704(B)(2)-Request to increase the maximum building height of a structure from 28 feet to 32 feet; All lots located in the Villagio Subdivision. The Villagio Subdivision is located on the west side of Romeo Plank Road, 1/3 mile south of 26 Mile Road; Section 6; Masters of Macomb Development, Petitioner. Permanent Parcel No. 08-06-200-046. The denial was based upon the reason that the Township recently amended the height of structures from 25 feet to 28 feet and that there are also provisions available in the Zoning Ordinance that allows for larger size lots.

MOTION carried.

MOTION by SELVA seconded by GALLAGHER to deny the variance request of Section 10.0704(B)(3)-Request to allow the first floor elevation to be measured from the highest top of curb elevation-not the lowest; All lots located in the Villagio Subdivision. The Villagio Subdivision is located on the west side of Romeo Plank Road, 1/3 mile south of 26 Mile Road; Section 6; Masters of Macomb Development, Petitioner. Permanent Parcel No. 08-06-200-046. The denial was based upon the Planning Consultants recommendations as follows:

1. Compliance with the strict letter of the height requirements would not unreasonably prevent the ownership from using the property as zoned. Other residential structures planned in Macomb Township will be required to comply with the same height requirements which are evidence that the proper height requirements would not be unnecessarily burdensome.

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2. **The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in residential developments in Macomb Township. The other owners are or will be required to comply with the height requirements. As a result the other property owners do not have the opportunity to make use of additional height for residential development.**

There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the height requirement from being maintained. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

3. **The variance would amount to increase the height by approximately 12% for each lot.**

MOTION carried.

14. **VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;**
Permission to vary the decision of the Planning Commission to deny the approval of the installation of cell tower equipment outside the building.
Located on North side of Hall Road, west of Tilch Road; Section 31; Metro PCS Michigan, Petitioner. Permanent Parcel No. 08-31-331-002.

Chairman FLORENCE read the findings and recommendations of March 9, 2006. They are as follows:

On February 7, 2006, the Planning Commission denied the proposed use of the property for the installation of equipment outside of the building. In 1993, the Planning commission approved the use of the property for a cell tower with the understanding that all of the equipment will be housed inside the building. The petitioner contends that there is no space inside the building for their equipment. A field check of the commercial building indicates that such space is vacant within 100' of the cell tower.

RECOMMENDATION:

It is recommended that the variance request be denied since the property owner had agreed in 1993 that all equipment would be housed inside the building.

A letter of explanation was submitted by the petitioner dated February 15, 2006, as follows:

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“INTRODUCTION

“Pursuant to the Zoning Ordinance of Macomb Township, Metro PCS Michigan, Inc. Seeks to appeal the decision to the Planning Commission to deny the site plan to co-locate an unmanned wireless communication facility on the existing monopole at 15683 Hall Road.”

“Founded in 1994, MetroPCS is a wireless service provider that offers local and long Distance services with simple rate plans. For over a decade MetroPCS has built a solid foundation for its network, purchasing C-Block licenses covering Lauderdale, Atlanta, Sacramento and San Francisco areas. MetroPCS is among the first wireless service operators to deploy an all-digital network based on third generation infrastructure and handsets.”

“The communication facility will use MetroPCS’s third generation technology and is a component of the applicant’s developing network for the Detroit area. Specifically this site provides coverage along Hall Road and the surrounding area, and will link with other MetroPCS sites in Macomb Township and the surrounding metropolitan area. MetroPCS has been authorized by the Federal Communications commission (FCC) to construct and operate a personal communications services system in the United States. MetroPCS also offers services to local police, fire, emergency, and public services agencies as well as to the general public. Each day more than 140,000 emergency calls are made on wireless phones. That’s more than 97 calls per minute from people involved in, or reporting accidents, crimes, medical emergencies and other difficult or dangerous situations. Wireless communications allow people to immediately report emergencies and law enforcement officials to quickly respond to them. “

“PROJECT DESCRIPTION”

“To provide clear, consistent wireless communications services in Macomb Township and the surrounding area, MetroPCS proposes to co-locate equipment on an existing monopole. Additionally, MetroPCS will install an equipment platform at the base of the tower next to the existing building, there will be two weatherproof equipment cabinets installed on the platform. “

“SITE & AREA DESCRIPTION”

“MetroPCS’s proposed site will use an existing wireless communications facility. MetroPCS will not increase the height of the tower. The surrounding area consists of commercial zoned districts to the east and west, a multi family residential district to the north and Hall Road to the south.”

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"FACILITY DESCRIPTION"

"MetroPCS is proposing to construct an unmanned wireless communications facility consisting of mounting 6 panel antennas on an existing monopole along with outdoor cabinets mounted on a 4' x 12' steel platform. Utilities including power and telephone will be accessed from the nearest available source. Access to the MetroPCS facility will be from the existing parking lot. A tower inventory map has been included with the application depicting all proposed MetroPCS sites located in Macomb Township."

"MetroPCS is licensed by the FCC to operate specifically within the 1966.25 – 1968.75 MHz, 1886.25 – 18888.75MHz frequency band. The total watts of effective radiated power of the facility will be less than or equal to 250 watts/sector. The proposed facility will operate within the frequency band provided by the FCC to ensure compliance of all FCC regulations. The proposed MetroPCS facility falls significantly below all state and federal regulations for emissions of non-ionizing radiation."

"ENVIRONMENTAL REVIEW"

"MetroPCS is proposing to co-locate on an existing monopole. This type of co-location does not require an Environmental Assessment."

"Earth, Air, Water, Plant Life, Animal Life"

"The proposed project will require no grading. Access to the site is by an existing driveway. There will be no air emissions from the equipment. No animal life will be disrupted as a result of this project."

"Noise"

"The proposed facility will be operated within the city noise standards."

"Land Use"

"The proposed unmanned wireless telecommunications facility will include antennas and associated equipment. The use is consistent with the underlying zoning and meets all applicable setbacks."

"Natural Resources"

"The proposed facility uses little power and is expected to significantly increase consumption of, or demand from, natural resources."

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“Risk of Upset”

“The proposed equipment incorporates adequate safety measures and precautions. Each facility is electronically monitored 24 hours a day for intrusion and environmental disruption. The facility will also contain a small sign identifying the site as a MetroPCS facility and a 1-800 number to call in case of an emergency (staffed 24 hours a day by MetroPCS employees). MetroPCS will comply with all FCC regulations regarding signage at the facility.”

“Population and Housing”

“The proposed MetroPCS unmanned wireless telecommunication facility will not affect population or housing trends in the area.”

“Transportation and Circulation”

“The proposed MetroPCS facility will have minimal impact on traffic and circulation. Peak travel to the proposed project will be limited to the initial construction of the facility, which should take approximately three weeks. After construction is complete, the facility will be visited once or twice a month for routine maintenance.”

“Public Services, Energy and Utilities”

“The small, unmanned facility will not generate demand for additional public services and will not increase demand upon existing energy sources. The equipment will connect to and use utility systems (electric and telephone land lines) that are already present on the subject parcel. The proposed facility will not telephone services are the only necessary utilities.”

“Aesthetics”

“The proposed facility will utilize an existing monopole to reduce the need for an additional tower in the area. Thus, reducing visual pollution in the area. The proposed equipment cabinets will be screened by the adjacent residentially zoned district by an existing 6’ high masonry wall.”

“Recreation”

“The proposed unmanned wireless telecommunication facility will have no impact on exiting recreational facilities.”

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“REQUIREMENT FOR APPEAL / VARIANCE”

1. **How the strict enforcement of the provisions of the Township Zoning Ordinance would cause a practical difficulty or unnecessary hardship and how such enforcement would deprive the owner of rights enjoyed by all other owners of property within the same Zoning District.** Wireless communications facilities are not addressed in the ordinance. The hardship would be that we would have to propose another tower in the immediate area. There is a precedent set by the township to allow equipment cabinets outside an existing building as MetroPCS has proposed. A carrier has equipment cabinets located outside at the facility located at 51660 Card Road (please see attached photo). The parcel is owned by the township and is zoned AG. If the ZBA does not overturn the decision of the Planning Commission, MetroPCS will have no choice but to construct a new tower with an appropriate building to house its equipment.
2. **How conditions and circumstances unique to the property are not similarly Applicable to other properties located with in the same Zoning District.** This is a unique situation because this parcel contains the only structure in the area that can provide an adequate height for the MetroPCS antennas. If there were available space inside the building, MetroPCS would locate its equipment there.
3. **How conditions and circumstances unique to the property were not created by the owner, or his predecessor in title, within the time following the effective date of the provision alleged to adversely affect such property.** There is no provision in the ordinance that addresses wireless communications facilities. Thus, this is a unique situation in the fact that we are being asked to abide by a requirement not in the ordinance. The original site plan approval did not require all future collocators to place their equipment inside the existing building.
4. **Why the requested variance will not confer special privileges that are denied other properties that are similarly situated and which are located in the same Zoning District.** To the contrary, this appeal would provide MetroPCS with the same privileges granted to our competitors. In addition, the approval of the appeal would result in fewer towers in the area, and thus, less visual pollution.”

“CONCLUSION”

“The establishment of this telecommunications facility will not be detrimental to the public health, safety or welfare of persons residing or working in the

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neighborhood, or be materially injurious to the neighborhood, or general welfare of the Township of Macomb. The proposed facility will not place any burden on traffic, nor will it result in objectionable levels of noise, odor, dust, or dirt.

The proposed facility will be an important link in a communication infrastructure. Individuals and businesses will be able to access wireless communications to stay in business, to expand their business, to provide personal convenience, or to strengthen personal safety and ability to communicate on demand with business, government, family and friends.

"In addition, the energy emitted is well below or within the parameters established by the FCC. The proposed MetroPCS facility will not interfere with any police, fire or emergency communications, or nearby televisions or radios due to the separation in the frequency ranges between MetroPCS and those used by other communications devices. The FCC controls and regulates the operation of all the telecommunication equipment and devices to be used at this proposed facility. The proposed facility will conform to all FCC standards and regulations."

Bob Pryzbylo, petitioner, was in attendance and reviewed the proposal to install an equipment cabinet and a battery pack within a fenced area. He also gave an overview of the sites they have received approval for, and future ones. The equipment would be abutting the building adjacent to the monopole on a galvanized pad with a chain link fence. Further, he reviewed how it would be screened from the surrounding neighbors. He indicated that reviewing Article 16, C-2, they meet all applicable standards and requirements of that section.

A brief history was given of the site plan approved 8-17-1993 and in that approval there were 18 conditions listed by the Planning Consultants none of which indicate that the equipment must be housed in one existing building.

Lastly, he asked that the Planning Commission decision be overturned by the Zoning Board of Appeals so that they may provide wireless communication service to the Township.

Member GALLAGHER stated he had done his research on this site and that the tower was allowed with a Special Land Use. The Special Land Use stated that all equipment must be housed inside a building.

Bob Pryzbylo stated he nor the property owner or tower owner has knowledge of any records of a special land permit being granted on this site. If, in fact, that document does exist, stating there is a Special Land Use permit granted for that tower, then he would respectfully request that the item be tabled until the

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Township Attorney or Mr. Schmeiser can provide us with a copy of that Special Land Use permit. To date, there is no record of that document existing, only an approved site plan.

Jerome R. Schmeiser, Planning Consultant, stated having the Special Land Use document is not germane. The site plan that was approved based upon the neighbors asking for an enclosure of the equipment associated with the cell tower.

Member SELVA indicated that there were store fronts available to store the equipment in and why that wasn't being pursued.

Bob Pryzbylo stated he was under the impression that those stores were available but, for retail purposes only.

Jerome R. Schmeiser, Planning Consultant, stated the plan as drawn and approved by the Planning Commission shows all equipment being stored inside a building. He further stated that if a Special Land Use permit was not granted the site plan will not proceed until such time as a permit is granted.

Bob Pryzbylo asked if the site would be grandfathered in.

Jerome R. Schmeiser, Planning Consultant, stated absolutely not.

Colleen O'Connor, Township Attorney, questioned why the site would be grandfathered in.

Bob Pryzbylo replied since the site has been established since 1993. In addition, if a Special Land Use permit was required and the township has not been able to identify one in thirteen years, and, Verizon has since also co-located on the tower and yet they were not required to obtain a Special Land Use permit why should it not be grandfathered.

Member GALLAGHER stated the users that are there have complied with the approval, other than a generator being located at the site.

Public Portion:

Helga Wickizer, 45206 Fryer, indicated that she lives in an upper unit of the condominiums that abut the site and that any equipment that runs at the site in question, she can hear. During the summertime when the windows are open I can also hear the generator that was mentioned. Lastly, she mentioned she would appreciate it if this request would be denied for the last time.

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MOTION by SLOSSON seconded by SELVA to close the public portion.

MOTION carried.

Bob Pryzybylo asked that the item be tabled until such time as a copy of the Special Land Use can be obtained from the Township Attorney.

Jerome R. Schmeiser, Planning Consultant, stated that if a Special Land Use has not been granted then an application for this permit be provided to the petitioner.

MOTION by GALLAGHER seconded by SLOSSON to table the variance request to vary the decision of the Planning Commission to deny the approval of the installation of cell tower equipment outside the building; Located on the north side of Hall Road, west of Tilch Road; Section 31; Metro PCS, Petitioner. Permanent Parcel No. 08-31-331-002. The item is tabled to May 9, 2006.

MOTION carried.

15. OLD BUSINESS

None.

16. NEW BUSINESS

Jerome R. Schmeiser, Planning Consultant, stated the next regular scheduled meeting is May 9, 2006.

17. PLANNING CONSULTANTS COMMENTS

None.

18. MOTION TO RECEIVE AND FILE ALL CORRESPONDENCE IN CONNECTION WITH THIS AGENDA.

MOTION by SELVA seconded by SLOSSON to receive and file all correspondence.

MOTION carried.

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ADJOURNMENT

MOTION by GALLAGHER seconded by SLOSSON to adjourn the meeting at 10:23 P.M.

MOTION carried.

Respectfully submitted,

Brian Florence, Chairman

Dawn Slosson, Secretary

Beckie Kavanagh, Recording Secretary

BK